

# SEATTLE TCI FRANCHISE AGREEMENT

## SECTION 1. NATURE AND TERM OF GRANT

### 1.1 Grant of Franchise.

(A) The City of Seattle hereby grants to TCI of Seattle, Inc., a Washington Corporation having its principal place of business in Bellevue, King County, Washington, a franchise to install, construct, operate and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Ordinance.

(B) Throughout this Franchise, the City of Seattle, Washington shall be referred to as the "City," and TCI of Seattle, Inc., shall be referred to as the "Grantee."

1.2 Duration of Franchise. The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be ten (10) years from the effective date of this Franchise, unless terminated earlier as provided herein.

1.3 Effective Date. The effective date of this franchise shall be January 20, 1996, subject to applicable law and subject to Grantee's written acceptance of its terms within thirty days following the effective date.

1.4 Franchise Not Exclusive. This franchise is not exclusive. The City reserves the right to grant rights or franchises to other persons, and reserves its own right as a municipality to use the Rights of Ways for the same or different purposes allowed Grantee hereunder, by franchise, permit or otherwise; provided, if the City grants any franchise for or otherwise permits the provision of Cable Services in Grantee's franchise area on terms that, taken as a whole, are materially less burdensome than this franchise contract, taking into account any difference in the number of subscribers served, the term of the Franchise and all other circumstances affecting the relative burdens, Grantee shall have the right to reopen this Franchise pursuant to Section 20 for the purpose of modifying only those terms of the Franchise that give rise to the material difference and only to the extent necessary to remove the material difference.

### 1.5 Relationship to Other Laws.

(A) Grantee's Franchise is subject to all terms, conditions and provisions of this Franchise Ordinance, of Seattle Municipal Code Chapter 21.60 ("SMC 21.60," or "Cable Communications Ordinance") as the same is now or hereafter amended, of the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, and of the Cable Communications Consumer Protection and Competition Act of 1992, as the same is now or hereafter amended. To the extent that this Franchise and SMC 21.60 are inconsistent, the provisions of this Franchise shall control. The material terms and conditions contained in this Franchise Agreement shall not be altered unilaterally by the City through modification of the Cable Communications Ordinance or

any other ordinance, rule, regulation, resolution, or other enactment of the City, except as may be permitted in the lawful exercise of the City's police powers.

(B) Grantee's Franchise is subject to the Charter of The City of Seattle and to those general ordinance provisions passed pursuant thereto. Unless expressly stated, nothing in this Franchise shall alter any requirements of the existing codes and ordinances of the City, including those relating to pole attachment, street use permits, fees, taxes, or construction requirements or schedules; provided, nothing herein shall prevent Grantee from challenging the legality of such codes and ordinances or their application to Grantee.

(C) It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of the Franchise contract for the entire term of the Franchise and, to the extent any provisions have continuing effect, after its expiration. However, both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers may change drastically during the term of this Franchise. Should such changes occur, the provisions and procedures of Section 20.1 (Reopeners) shall govern, and the City and Grantee shall negotiate in good faith to amend the Franchise to preserve the rights and obligations of the City and Grantee hereunder to the fullest extent consistent with such changes. The parties agree that the perpetuation of the substantial equivalent of the current statutory and regulatory structure governing cable television is not a condition of this contract, or a fundamental assumption that either party is making in entering into it; provided, however, nothing herein shall prevent either the City or the Grantee from asserting that any part or parts of the Franchise are preempted by state or federal law as a result of such changes.

## SECTION 2. CITY'S PRINCIPLES AND INTENT

The following provisions are statements of the City's intent in entering into this Franchise Agreement and shall not supplant or modify specific provisions of the Agreement:

(A) Provide for the installation and operation of a Cable System with features meeting the current and future cable related needs and interests of the community.

(B) Encourage the widest feasible scope and diversity of programming and other services to all City residents that are consistent with community needs and interests.

(C) Encourage telecommunications services of all kinds to be offered to City residents on a non-discriminatory basis;

(D) Encourage prompt implementation of technical advances in communications technology;

(E) Provide for ample and fairly allocated access to cable facilities for program producers for government, educational, and public service programming;

(F) Ensure that rates and charges for basic cable programming, equipment, and service are fair, reasonable and consistent with federal standards;

(G) Require that the Grantee provide high quality customer service;

(H) Ensure that the installation and maintenance of cable facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;

(I) Encourage competition among cable operators and between cable operators and other providers of communications services on a fair and equitable basis;

(J) Protect the City's interests and the health, safety, and welfare of its citizenry;

(K) Ensure the universal availability of Cable Services within franchise areas on a non-discriminatory basis;

(L) Provide for timely mandatory government access to all Cable Systems in times of civil emergency.

### SECTION 3. DEFINITIONS

For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is capitalized.

3.1 "Access" means the right of certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, on a non-discriminatory basis, to use the Cable System for specific non-commercial purposes, including the right to acquire Programming, to create Programming free from outside control including that of the Grantee, and to distribute and receive Programming over the Cable System.

3.2 "Access Channel" means any Channel, or portion thereof, designated for Access and made available by the Grantee at no charge.

3.3 "Affiliated Entity" means any enterprise that owns or controls the Grantee, or is owned or controlled by the Grantee, or otherwise has ownership or control in common with the Grantee, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations who meet this definition.

3.4 "Basic Service" or "Basic Service Tier" means "basic service" and includes, at a minimum, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals or service added to the basic tier by the Grantee.

3.5 "Cable Operator" means any person or group of persons (A) who provides cable services over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or, through any arrangement, is responsible for the management and operation of such a cable system.

3.6 "Cable Services" means Programming, in any combination, or any other service provided by the Grantee on or in connection with a Cable System.

3.7 "Cable System" means all or part of the facility owned, rented, leased or otherwise controlled by Grantee (including plant, facilities, equipment, and closed signal transmission paths, switches, software, hardware, and other processing equipment, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all conductors, home terminals, converters, remote control units, and all

associated equipment or facilities) the purposes of which include distributing Cable Services or Programming or producing, receiving, amplifying, storing, processing, or distributing voice, data, video, multimedia or other forms of electronic, optical or other signals in the Franchise Area.

3.8 "Capital Costs" means the funds expended in connection with the acquisition, installation or construction of equipment, products or other assets the useful life of which is expected to exceed one year.

3.9 "Channel" means a radio frequency band capable of carrying combinations of video, audio, digital or other nonvideo signal. This could be a digitally compressed channel.

3.10 "City" means The City of Seattle, a municipal corporation of the State of Washington.

3.11 "City Council" means the Council of The City of Seattle.

3.12 "Closed Channels" are upstream or downstream channels that are not available for receipt by Subscribers without special equipment or authorization.

3.13 "Demarcation Point" means the physical point at which the Cable System enters the subscriber's home or building.

3.14 "Designated Access Managers" means the entity or entities designated by the City under Section 6.1.

3.15 "Document" or "Records" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including records maintained by computer or other electronic or digital means, maintained by the Grantee in the ordinary course of conducting its business.

3.16 "Downgrade Charges" for implementing a request for a change or reduction of cable services to less than current services or tiers.

3.17 "Downstream Channel" means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including Interconnection points.

3.18 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, designed for residential occupancy and includes "household" as that term is used in the Federal Cable Act, 47 U.S.C. ' 521, et seq. Buildings with more than one set of facilities for cooking are multiple unit buildings unless the additional facilities are clearly accessory.

3.19 "Educational Access" means Access for schools and other educational institutions and entities;

3.20 "Facility" means any distribution component of a Cable System.

3.21 "FCC" means the Federal Communications Commission.

3.22 "Fiber Optic" refers to a transmission medium of optical fiber cable and the electronics, software and equipment that support delivery of Cable Services by means of the optical fiber cable.

3.23 "Franchise" means this franchise agreement.

3.24 "Franchise Area" means the area within the City within which the Grantee is authorized to provide Cable Services under this Franchise, and any modification thereof.

3.25 "Government Access" means Access for governmental entities or their designees;

3.26 "Grantee's Pro Rata Share" is a fraction the numerator of which is the total number of Grantee's Subscribers calculated on equivalent subscriber basis and the denominator of which is the total number of Subscribers calculated on equivalent subscriber basis of all franchisees in the City.

3.27 "Gross Revenues" means, for purposes of franchise fee calculations, all revenue received by the Grantee, in whatever form and from all sources, in connection with the operation of Grantee's Cable System, including any revenue received by the Grantee from any use of any component of the Cable System for any purpose by the Operator or by others. "Gross Revenues" shall include, without limitation, revenue received from advertising, from installations, from sales occurring as a result of home shopping or similar programming, from leased channels, and from sales of guides to programming. "Gross Revenues" shall not include revenues received from telecommunications services or revenues received by third parties unless such revenues are of a type normally received by the Grantee prior to the date of this franchise or would normally be received by a cable operator similarly situated in the ordinary course of business as compensation for use of the Cable System.

Gross revenues shall be determined without deduction for (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, but revenue shall be counted only once in determining gross revenues. "Gross Revenues" shall not include funds that the Grantee is legally obligated to collect as sales or similar taxes.

3.28 "Guarantor" means any entity that expressly issues a guaranty of Grantee's performance of any obligation under the Franchise.

3.29 "Headend" means a facility for signal reception and/or dissemination on the Cable System, including all related equipment, such as cable, antennas and wires, satellite dishes, monitors, switchers, modulators, computers, software, processors for television

broadcast signals, equipment for the Interconnection of Grantee's Cable System with adjacent cable systems and for Interconnection of any separate networks which are part of Grantee's Cable System.

3.30 "Initial" or "Initially" means as of the effective date of this Franchise.

3.31 "Interconnect," "Interconnected," or "Interconnection" means the provision of an electronic linkage between Grantee's Cable System and Cable Services or any part, designated Channel or signal pathway thereof and any other designated Cable System and Cable Services or any part, designated Channel or signal pathway thereof, with the result that Cable Services of high technical quality may be transmitted between such Cable Systems or Programmers.

3.32 "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee.

3.33 "Liquidated Damages" means any requirement imposed on the Grantee to pay specified sums to the City as a result of performance deficiencies identified herein.

3.34 "Normal business hours" means the hours from 8:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m., Saturday, excluding legal holidays.

3.35 "Normal operating conditions" means service conditions within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

3.36 "Parent Corporation" means TCI West, Inc., TCI Holdings, Inc., Tele-Communications, Inc., and any entity created by any merger or acquisition of or by Telecommunications, Inc. and includes any other existing or future corporation, entity or person with greater than 50% ownership, or control, over Grantee.

3.37 "PEG Access" means Public Access, Educational Access, and Government Access, jointly or severally.

3.38 "Person" means any sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and any natural person.

3.39 "Programmer" means any Person who prepares, produces or provides Programming that is intended for transmission on a Cable System.

3.40 "Programming" means the video, audio, voice, data, multimedia or other material or programs prepared for or capable of transmission on a Cable System, or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.

3.41 "Public Access" means Access for the public, including organizations, groups and individuals.

3.42 "Puget Sound Region", or "Region" or "Regional" means the geographic area of King, Pierce, and Snohomish counties.

3.43 "Rebuild" means to upgrade the Cable System in accordance with Section 8.

3.44 "Right of Way" means the surface of and the space alongside, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and road right-of-way now or hereafter held or administered by the City.

3.45 "School" means any public educational institution accredited by the State of Washington, including primary and secondary schools (K12), colleges and universities.

3.46 "Service Interruption" means any loss of any element of programming on any part of the Cable System.

3.47 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such person in a multiple unit building, except for purposes of reporting or cost allocation, where equivalent subscriber basis may be used.

3.48 "Tier" means Programming Services offered by Grantee to Subscribers as a package.

3.49 "Upgrade" means an improvement in any technical aspect of a Cable System.

3.50 "Upstream Channel" means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including Interconnection points.



## SECTION 4. FRANCHISE AREA

4.1 Franchise Area. Grantee shall provide Cable Services, as authorized under this Franchise, within the areas of the City indicated on the copy of the map attached hereto as Exhibit A, the original of which shall be maintained by the City in sufficient detail and size to determine exact boundaries and shall be readily accessible to Grantee. The original map shall be updated to reflect actual location of Grantee's plant as it existed on the effective date of this Franchise.

### 4.2 Expansion of Franchise Area.

(A) Grantee may provide Cable Services outside its Franchise Area only after receiving specific City approval.

(B) The City shall approve all expansion areas of the Franchise and, subject to the requirements of Section 1.4, may identify conditions of service or a franchise unique to that expansion area.

## SECTION 5. PROGRAMMING AND CHANNEL CAPACITY

5.1 Grantee Compliance . Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.

5.2 Maintenance of Existing Conditions .

(A) Without the written consent of the City and except as otherwise specifically provided in this Franchise, Grantee shall not delete or so limit as to effectively delete any broad category of Programming identified in Section 5.3 carried on Grantee's cable system as of the effective date of this Franchise.

(B) In the event of a modification proceeding under federal law, the mix and quality of services provided by the Grantee on the effective date of this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

5.3 Expanded Programming and Channel Capacity . Beginning no later than the date by which the system rebuilds is to be completed, Grantee shall provide:

(A) A minimum Downstream Channel capacity of 70 activated Channels to all Subscribers, to be activated within six (6) months of the completion of the rebuild or earlier as separate phases of the rebuild is completed, at Grantee's discretion.

(B) Closed Channels in sufficient number and technical quality to permit the implementation of the Closed Channel requirements of the Franchise.

(C) In addition to programming provided on PEG channels and local off-air broadcast channels, if any, Grantee shall provide the following broad categories of Programming:

(1) Education

(2) News & information

(3) Sports

(4) Cultural and performing arts

(5) Government affairs

(6) Weather

(7) Programming addressed to diverse ethnic and minority interests

(8) Audio programming (including a selection of local FM radio stations)

(9) Business news

(10) General entertainment (including but not limited to movies)

(11) Children's programming

(12) Family programming

(13) Science/documentary

(14) Canadian programming

The requirements for each category of programming may be satisfied by providing a separate channel devoted substantially to the category or by programming from more than one channel which in the aggregate totals the equivalent of a channel devoted substantially to the category.

#### 5.4 Ascertainment Process.

(A) At least annually, Grantee shall arrange and pay for a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's Cable Services, and of the cable related needs and interests of the community and the preferences of Subscribers within the Grantee's Franchise Area, conducted by an independent non-affiliated entity using generally accepted market research techniques. A written summary of the findings, prepared by the independent entity and including a description of the methodology used, and a description of any actions Grantee intends to take, shall be provided to the City.

(B) Annually following the ascertainment process, Grantee shall make a good faith determination of whether adjustments to its broad programming categories or other cable services are reasonably necessary to accommodate the cable related community needs and interests in light of the cost of meeting those needs and interests, and, in the event such changes are determined in good faith by the Grantee to be necessary, shall implement them within a reasonable time. This provision shall not limit the City's rights pursuant to Section 19.1.

5.5 Deletion or Reduction of Programming Categories. Grantee shall not delete or so limit as to effectively delete any broad category of Programming within its control for any group of subscribers without the City's consent, which shall not be unreasonably withheld, and shall provide at least thirty (30) days' prior written notice to the City of Grantee's request to do so, including all proposed changes in bandwidth or channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.

5.6 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel any Programming which is obscene in the sense that the Programming is not protected

speech under the Constitution of the United States. The Grantee shall adopt a written policy prohibiting obscene programming. This section shall not apply to Internet transmissions, which are governed by Section 7.2(G).

5.7 Parental Control Device. Upon request by any Subscriber, Grantee shall make available at Grantee's actual cost a parental control or lockout device compatible with the Subscriber's equipment that will enable the Subscriber to block access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription and annually thereafter, and if requested by the Subscriber, shall provide the device at the time of the original installation.

5.8 Leased Access Channels. Leased access channels shall be provided in accordance with federal law.

## SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS

### 6.1 Designated PEG Access Managers.

(A) The City shall name Designated Access Managers for Public, Education, and Governmental Access programming. The Designated Access Managers of Educational and Governmental Access shall have sole responsibility for operating and managing their respective Access Facilities. The Grantee shall serve as the initial Designated Access Manager for Public Access and will be subject to the requirements of Section 6.3. The Grantee and the City anticipate the creation of a board to act as Designated Access Manager for Public Access to set general public access policy, with Grantee retaining day-to-day operational management of the Public Access facility under acceptable contract with the board.

(B) Grantee shall cooperate with Designated PEG Access Managers and providers and facilitate their use of Grantee's Cable System and Programming of PEG Access channels. Grantee shall enter into such operating agreements with Designated PEG Access Managers as are appropriate to meet PEG Access requirements of this Franchise. The time Grantee's personnel devote to fulfilling the obligations of this subsection shall not be an external cost.

### 6.2 Public Access Facility Location and Funding

(A) The Grantee shall maintain, operate, and provide existing Public Access facilities and levels of service provided as of December 1, 1995 pursuant to its prior City franchise obligations. Replacement equipment and additional Public Access facilities and services shall be provided pursuant to Section 6.2(B) as determined by the City in consultation with the Grantee, the Designated Access Manager for Public Access, and other area franchising authorities. Grantee shall be responsible for maintenance of replacement equipment.

(B) Funding for Public Access facilities and services other than existing facilities and levels of service described in Subsection (A) above shall be provided by the City from its franchise fees and general funds, with contributions from other area franchising authorities as appropriate under their respective franchises and permitted by applicable law. Funding shall not be financed by additional charges to City resident Subscribers except as provided in Section 11.5. Nothing in this section shall prevent the Designated Access Manager for Public Access from engaging in general public fundraising activities to provide additional support for public access.

### 6.3 Grantee's Obligations as Initial Designated Public Access Manager.

(A) Public Access Facility. The Grantee as Public Access Manager shall operate the Public Access Facilities in accordance with the standards and regulations set forth in this Section 6.3.

(B) Programming Limitations. The Grantee may not prohibit Access to the Public Access Channels by non-commercial Programmers and non-revenue-producing Programming except to the extent authorized by 47 U.S.C. ' 532(h) as it may from time to time be amended or to the extent otherwise provided by law; provided, nothing herein shall prevent limited use of Public Access channels by the Designated Access Manager for Public Access to solicit sponsorship of Public Access. For as long as it is designated as the Public Access Manager, Grantee shall schedule all programming for public access channels and provide equal opportunity for use of the Public Access facilities except as provided below.

(1) Residents of the City and other franchise areas that participate in Public Access funding as described in Subsection 6.2(B) above shall be given preference over non-residents.

(2) Programming produced in and relating to the Pacific Northwest shall be given preference with the following hierarchy within such Programming based upon place of origination: Seattle, Washington State, Pacific Northwest.

(3) Grantee may give a preference to live Programming over recorded Programming to the extent that live Programming is of a kind that is normally viewed only during certain times of the day (e.g., talk shows).

(4) Grantee shall maintain a balance between onetime shows and series, and live and taped programming.

(C) Rules for Use of Equipment and Facilities. Grantee will use its best efforts to operate the Public Access facilities within the policies and guidance of the Designated Access Manager for Public Access to the full extent possible with the existing facilities and levels of service as defined in Section 6.2(A) and any additional facilities and services funded pursuant to Section 6.2(B).

(D) Public Access Management Performance Standards. For as long as the Grantee is designated as the Public Access Manager, the Grantee will use its best efforts to meet the following performance standards with respect to its management of Public Access:

(1) Grantee will cablecast a minimum of 120 hours of programming per week, excluding holidays.

(2) Grantee will provide staffing for Public Access facilities sufficient to maintain existing levels of service as defined in Section 6.2(A).

(3) Grantee will make all Public Access facilities, equipment and resources available at times that are convenient and practical for users for a minimum of 100 hours per week, excluding holidays.

(4) Grantee will maintain complete records of all equipment, including acquisition date, preventative maintenance and replacement schedule, a log of reported malfunctions and repairs, and will maintain a reasonable inventory of reserved equipment in the event of failures in a key system.

(5) Grantee will provide information and training for Public Access users, and will conduct a minimum of six meetings or classes per month, will distribute a minimum of six newsletters per year, and will make daily program schedules available to local news media.

#### 6.4 Government and Educational Access Facilities .

(A) Government Access Facilities. Government Access facilities shall be funded by the City from its franchise fees and general funds, with contributions from other area franchising authorities as appropriate under their respective franchises and permitted by applicable law. Funding shall not be financed by additional charges to City resident Subscribers except as provided in Section 11.5. Grantee shall install and furnish without charge basic and expanded basic cable service to buildings in the Franchise Area owned and operated by the City for public purposes and not residential use (residential areas of fire and police stations excepted), as designated by the City.

(B) Educational Access Facilities. Except as otherwise provided herein, Educational Access facilities shall be funded by the City and/or educational institutions. Funding shall not be financed by additional charges to City resident Subscribers except as provided in Section 11.5.

(1) Grantee shall work in conjunction with other cable providers in the City to coordinate schedules, distribution and publication of "Cable in the Classroom" activities and shall provide training sessions for teachers in the use of the program. If the nationwide program is discontinued, the Grantee shall consult with representatives of the educational community to select an alternative program if one is reasonably available.

(2) Grantee shall install and furnish without charge basic and expanded basic cable service and Cable in the Classroom (or a reasonably available alternative program selected pursuant to Subsection (1) above) to every School building in the Franchise Area.

6.5 Cost Treatment of PEG Costs . It is the intent of the City to minimize the impact of PEG costs on monthly Subscriber charges, and to that end all such costs shall be funded by the City from its franchise fees and general funds and contributions from other sources as described herein. No charges for PEG costs shall be levied on Grantee or its Subscribers except as provided in Section 11.5. In the event such charges are levied, any non-operating cost that Grantee incurs to meet the requirements of this Section 6 shall be deemed to be an external cost for rate regulation purposes, and may be recovered from Subscribers in monthly subscriber charges, but shall not be offset against any sums due the City as a tax, franchise fee or otherwise, regardless of whether the combination of franchise fees and said costs exceeds 5% of Grantee's Gross Revenues in any 12month

period. Operating costs may be offset against the franchise fee to the extent provided by federal law.

#### 6.6 Channel Capacity .

(A) Public Access Channels. Throughout the Franchise term, beginning no later than the date provided herein for the rebuild of the Cable System to be completed, Grantee shall provide not less than two (2) video Channels for Public Access Programming to all Subscribers, as described in Grantee's Proposal, which will be interconnected with all other City franchises and at least one (1) of which may be interconnected with contiguous franchises in King County at the City's discretion and cost, if technically feasible, in accordance with the procedures in Section 6.8. Additional Public Access Channels shall be provided as set forth in Section 6.9.

(B) Educational Access Channels. Throughout the Franchise term, beginning no later than the date provided herein for the rebuild of the Cable System to be completed, Grantee shall provide not less than six (6) video channels for Educational Access Programming to all Subscribers, as described in Grantee's Proposal, which will be Interconnected with all other City franchises and at least one of which shall be Interconnected with contiguous franchises in King, Snohomish and Pierce Counties at the City's discretion and cost, if technically feasible, in accordance with the procedures in Section 6.8. Of the initial Educational Access Channels provided, one (1) Channel may be a Closed Channel and one (1) Channel may be dedicated to programming provided by a local public television broadcast station. Additional Educational Access Channels shall be provided as set forth in Section 6.9.

(C) Governmental Access Channels. Throughout the Franchise term, beginning no later than the date provided herein for the rebuild of the Cable System to be completed, Grantee shall provide no fewer than two (2) video Channels for Governmental Access Programming to all Subscribers, as described in Grantee's Proposal, which will be Interconnected with all other City franchises and may be Interconnected with contiguous franchises in King, Snohomish, and Pierce Counties at the City's discretion and cost, if technically feasible, in accordance with the procedures in Section 6.8. Of the initial Governmental Access Channels provided, one (1) Channel shall be a Closed Channel. Additional Governmental Access Channels shall be provided as set forth in Section 6.9.

(D) Upon City request and at City's cost, Grantee shall provide, at incremental cost, hardwire returns from the primary PEG access program origination points for transmission of access Programming to the Headend. With City approval, Grantee may elect to provide, at no charge, the equivalent capacity on the Cable System. The hardwire returns may also be used pursuant to any agreements reached under the provisions of Section 7.2(I).

6.7 Access Channel Assignments . Channel assignments for PEG Access Channels shall be determined in accordance with the criteria listed below and the procedures described in Section 6.8(B).



(A) PEG Access Channels shall be assigned so that they are the same on all City franchises and, to the extent feasible, other franchises adjacent to Grantee's Cable System.

(B) Nothing in this section shall limit Grantee, Designated Access Managers, or other cable franchisees from agreeing upon other Channel assignments.

#### 6.8 Access Interconnections.

(A) Grantee shall continue all Interconnections of Access Channels in effect on the effective date of this Franchise and as otherwise provided herein, unless otherwise authorized or directed by the City.

(B) Grantee shall work with the City, other cable franchisees, and Designated Access Managers to establish and coordinate Citywide Access Channel assignments and Interconnected PEG Access Channels. If the City and Grantee are unable to agree, the matter shall be submitted to arbitration under Section 21.

(C) Grantee shall ensure that signal quality comparable to that available on the subscriber network and routing systems are provided continuously for all Access Interconnections throughout the duration of this Franchise.

#### 6.9 Expansion of Access Channels.

(A) Additional Access Channels. In addition to the initial Access Channel capacities outlined in Section 6.6, the Grantee shall provide, at the City's request when technically and economically feasible, additional Public, Educational and Government Access Channels when usage of an Access Channel reaches the level specified in Section 6.9(B). The City may request up to three (3) additional Public Access Channels, six (6) additional Educational Access Channels and six (6) additional Government Access Channels; provided, no more than one such additional channel shall be required in each Access category unless they may lawfully be provided on a digital basis. The Grantee shall provide such additional channels as required by this subsection within six (6) months of City's demonstration of the need for such channels pursuant to Section 6.9(B). No additional channel provided pursuant to this subsection shall supplant existing Programming within any of the categories set forth in Section 5.

(B) Trigger for Added Channels. The City may require the Grantee to provide additional activated Channel capacity for the following types of PEG Access when City demonstrates that the following conditions are met:

(1) Public Access Channels: During 16 consecutive weeks, the Public Access Channels are in use for substantially non-duplicated Programming 80% of the time, Monday through Friday, during the hours 9:00 a.m. to 11:00 p.m.

(2) Educational Access Channels: During 16 consecutive weeks, the Educational Access Channels are in use for substantially non-duplicated Programming 80% of a 60-hour

programming week; provided, any channel dedicated to programming provided by a local public educational broadcast station pursuant to Section 6.6(B) shall not be considered in this calculation.

(3) Government Access Channels: During 16 consecutive weeks, the Government Access Channels are in use for substantially non-duplicated Programming 80% of a 60-hour programming week.

(C) Assignments for Additional Access Channels. Grantee shall cooperate with the City, Designated PEG Access managers, and other cable franchisees to establish common, logically related additional PEG Access Channel assignments in accordance with Sections 6.7 and 6.8(B).

6.10 Access Channels on Basic Tier. Except as otherwise agreed by the City, all Access Channels shall remain on the Basic Tier of Cable Service offered by Grantee on its Cable System. Location of all Access Channels shall be determined as provided in Sections 6.7 and 6.8(B).

6.11 Changes in Technology.

(A) Interactivity. In the event Grantee offers commercial interactive services on its cable system, the City shall have the right to require equivalent interactivity on one governmental and one educational access channels when thirty percent (30%) of Grantee's Subscribers subscribe to such services, upon demonstrating a need for such changes, and pursuant to the procedure in Sections 6.11(B). Any Subscriber equipment necessary to use interactive features on such access channels may be made available to Subscribers on the same terms as for commercial uses. Any other equipment or expense necessary for such interactive access channels shall be treated as a PEG cost under Section 6.5. For purposes of this subsection, "interactive services" means two-way communication over the Cable System in which the Subscriber interacts with the program being viewed, and does not include merely ordering and receiving pay-per-view or videogame services or use of Internet access services.

(B) Digitization of Analog Channels. The City may require the Grantee to digitally compress one or more of the PEG Access Channels at or after the time that Grantee converts a substantial portion of its cable system to compressed digital transmission. In the event Grantee reasonably determines that any such conversion the City may request is not economically or technically feasible, the Grantee may invoke the procedure of Section 20 in lieu of immediate compliance, in which event the burden shall be on the Grantee to demonstrate that such conversion is not technically or economically feasible. Grantee may, at its own discretion, move analog PEG channels to digital format, if and when all subscribers who wish to receive the channels already have the necessary equipment.

6.12 Technical Quality. Grantee shall maintain all Upstream and Downstream and Closed Access Channels and Interconnections of Access Channels at the level of

technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations or at the same level of quality as comparable Subscriber Channels, whichever is higher.

## SECTION 7. GENERAL CABLE SYSTEM REQUIREMENTS

7.1 Introduction. The cable system shall include facilities and equipment that will deliver the levels of service described below. The cable system shall be designed to facilitate expansion of coverage and services, to be upgradeable without significant impairment to working services or rebuilding the cable infrastructure.

7.2 High Speed Internet Access. There shall be no requirement that Grantee construct or operate a separate and distinct institutional network. In lieu of separate institutional network (I-Net) facilities, Grantee and the City shall work together to explore use of high speed access to the Internet through the Cable System to provide communications and services between and among the public and educational and government institutions. To this end Grantee shall conduct a trial of high speed Internet access as described in the Memorandum of Understanding between the Grantee and the City dated September 27, 1995, and shall offer commercial Internet access service to Subscribers if and when such service is commercially feasible, as follows:

(A) As soon as practicable after completion of the system upgrade required under Section 8, Grantee shall offer commercial Internet access to residential, governmental and educational subscribers, absent a showing that the service is not commercially feasible. There shall be a rebuttable presumption that such access is commercially feasible if a comparable commercial service for residential, governmental and educational subscribers is commercially available in at least five (5) comparable cable systems in the nation (excluding test areas).

(B) To the extent that Internet access is not commercially feasible at the time it is scheduled to take effect under Subsection (A) above, but then later becomes commercially feasible, Grantee agrees to offer the service within a reasonable time to be negotiated with the City.

(C) Internet access service shall, at the option of Grantee, be offered as a premium service. Grantee will provide and own the transmission path; e.g., cable, head-end routers, modulators and demodulators; and will make available, through sale, lease, or otherwise, any subscriber connection equipment (such as modems) required, but shall not prohibit subscribers from using their own compatible equipment.

(D) The service shall allow subscribers the ability to obtain transmission rates of at least 1.5 Mbps in the downstream direction and no less than 96 Kbps in the upstream direction. The transmission medium may be shared, but the customer service standard contention rate in each segment up to the Internet backbone shall not exceed three percent (3%) in any segment for more than three (3) consecutive days.

(E) It is contemplated that Internet access will be open to the broad range of Internet servers and functions, that it will allow subscribers to be providers of information subject to appropriate charges, and that subscribers will have unrestricted access to the Internet national backbone as to content or sources of information, except to the extent that the

company may incur liability for transmitted materials. Grantee acknowledges the City's interest in encouraging broad compatibility with subscribers' connection equipment and applicable standards, and will consider these factors, in addition to technical, economic, and marketing considerations, in its design of the service.

(F) Notwithstanding the foregoing design parameters, it is recognized that exact service speeds, services, and configuration offered will depend on experience gained in the various trials conducted by Grantee and others and the technology available at the time of commercial introduction of the service. If at that time technology to provide faster transmission rates is economically feasible, or different optional rates, services, and configurations will serve subscriber needs as well, Grantee shall consult with the City about the appropriate transmission rates, services, and configurations needed by various subscriber groups, including government and educational users, but the consultation shall not be binding on Grantee.

(G) Security, content and copyright of information transmitted from a residential, government or educational user, or information transmitted from a service provider to a residential, government or educational user, is the responsibility of the user or the service provider, and not the responsibility of Grantee. Grantee shall have no responsibility for the security, content and copyright of information transmitted in either direction.

(H) The City may require no more than two (2) technical upgrades of the Internet access service no sooner than three (3) years after Grantee begins providing commercial Internet access to residential, governmental and educational subscribers, upon a showing that in the ten (10) comparable cable systems selected by Grantee and the City under Section 7.6, thirty percent (30%) of those markets have upgraded their Internet access capacity to a material degree beyond that provided by Grantee. If an upgrade is required, then the franchise will be extended for a period of five (5) years from the date of the completion of upgrade at Grantee's option. If an upgrade is required, the cost thereof shall be deemed an external cost for rate regulation purposes at Grantee's option.

(I) The City and Grantee recognize the provision of the Internet access service described above is an important means to connect public, government and educational institutions, and to functionally provide the equivalent of institutional network services in a cost effective manner. Grantee will work with the City to allow the City, if technically feasible, and at the City's cost, to connect appropriate equipment to route City addressed packets of Internet traffic on a direct connection to the City network. This direct connection shall not be used to connect subscribers to the Internet backbone, except by permission of Grantee. Grantee will explore the feasibility of a similar arrangement with the University of Washington.

**7.3 Cable Plant Topography.** The Grantee will rebuild its cable system utilizing "Fiber to Service Area Star" topography or configuration. Fiber optic cable will be installed from the headend out into neighborhood areas. At the node, coaxial cable will be installed on poles or in the ground to service customers.

7.4 Headend. The Grantee's headend will be housed in an environmentally hardened building, with sufficient air conditioning and power conditioning equipment both for short-term and long-term equipment installation. Standby powering will be installed of sufficient size to be able to provide a continuous supply of electricity in the event of loss of commercial power.

7.5 Upgrade to Maintain Technological Currency. At the City's request upon the showing required pursuant to Section 7.6 and subject to the procedures of Section 20, the Cable System, and any affected component thereof, shall be upgraded during the term of this Franchise to maintain a condition of technological currency. If such an upgrade is required, the term of this Franchise shall be extended an additional seven (7) years from the date the upgrade is ordered or the date the requirement is finally upheld under the procedures of Section 21, whichever is later, and the appropriate costs of the upgrade shall be deemed external costs passed directly to Subscribers for rate regulation purposes, both at Grantee's option.

7.6 Technical Upgrade Procedure.

(A) At any time after the fifth year of the term of this Franchise the City may require a technical upgrade of the Cable System upon one of the following showings:

(1) that at least thirty percent (30%) of the comparable cable systems owned or operated by Grantee's Affiliated Entities listed in Exhibit B to this Franchise Agreement have upgraded their capacity to a material degree beyond that of Grantee's Cable System; or

(2) That there is a material disparity between the level of service and capacity of Grantee's Cable System and that of a significant number of other comparable systems, and that there is a demonstrable need and public interest to be served by the upgrade.

(B) The City may conduct an inquiry to determine whether either showing can be made. Grantee shall cooperate with the City in the investigation and provide information, including, if reasonably available, estimated general cost figures, technical specifications, and equipment specifications that may assist such an undertaking.

(C) Grantee acknowledges and agrees that the City's investigation may include information not provided by Grantee, and that the City may commission third parties, as necessary, to ascertain facts in support of either showing. The public may also be invited to comment on the technical currency of the Grantee's system.

(D) In the event the City's investigation indicates that a technical upgrade may be necessary under either showing, the City may invoke the provisions and procedures of Section 20 to determine whether and to what extent an upgrade of the system is required.

7.7 System Reliability and Performance. The Grantee's system will meet or exceed FCC technical standards, as amended from time to time. The Grantee's cable system will be backed up with an average of 4 hours standby power at each node and at such cable plant

that is contiguous to such node. The cable system powering will be monitored, and crews will be dispatched in the event of loss of commercial power. In the event that the system cables or fiber optic lines are severed, the Grantee will respond within an average of 2 hours and will correct all such outages, within its control, within 24 hours.

7.8 System Capacity and Features. The Grantee's system will have the following capacity and features:

DOWNSTREAM:

Frequency Spectrum: 54-750 Mhz.

Channel Capacity: At least 70 channels

UPSTREAM:

Frequency Spectrum: 5-40 MHz.

Channel Capacity: 4 N.T.S.C. video channels

The Grantee's system will be two-way capable to the home. Grantee will activate two-way services as determined by the Grantee.

7.9 Subscriber Equipment Interface and Control. The Grantee will comply with the FCC's standard on equipment compatibility.

7.10 Cost Treatment of Rebuild Requirements. Grantee has advised the City that the rebuild requirements described in Section 8 constitute Grantee's own rebuild plan that predated the negotiation of this Agreement. Any cost that Grantee incurs to meet the original rebuild of its physical plant as outlined in Section 8.3 shall not be deemed to be an external cost and shall not be offset against any sums due the City as a tax, franchise fee or otherwise regardless of whether the combination of franchise fees and said costs exceeds 5% of Grantee's Gross Revenues in any 12month period, nor shall said costs be the basis for an increase of regulated rates, except as elements of the rate base for a rate of return cost of service proceeding. However, any non-operating cost attributable to City requirements in addition to Grantee's original planned rebuild shall be treated as external costs for the purposes described above.

7.11 Emergency Alert System. When technically feasible, Grantee shall implement a system for providing restricted audio override of all audio, and interrupt of all video Channels, during emergencies, with override to be placed under the City's control, in compliance with FCC Rules. The emergency alert system shall provide for activation from the Mayor's office and/or the City's emergency operations center, with coded access for both audio and video messages. Upon request by the City, the Grantee shall cooperate with the City to test the emergency override system, for periods not to exceed one (1) minute in duration and not more than once every six (6) months. Notwithstanding the

foregoing, FCC Rules governing emergency alert systems shall take precedence if in conflict with this section.



## SECTION 8. UPGRADE & EXTENSION PROJECT SPECIFICATIONS

8.1 Introduction. The cable system rebuilds and upgrade project shall be designed so as to minimize service interruptions and inconvenience to customers. Subscribers will be informed of the impending upgrade and the benefits of the new system. Grantee will maintain a "1800" phone number during the rebuild, so that Subscribers may call with questions or complaints.

8.2 Cable System Rebuild Timeframe. The Grantee will complete its rebuild of the cable system in the City of Seattle, within 36 months from the effective date of the franchise, excluding delays reasonably beyond Grantee's control.

8.3 Construction Plan and Practices Submittals and Approvals. The Grantee will submit a current copy of its applicable construction procedures and fiber optics manuals to the City, upon request. Grantee will supply copies of these manuals to all contractors and ensure through routine inspections that all contractors comply with such practices. Grantee will provide periodic updates of its construction plans to the City.

8.4 Compliance with Construction and Safety Standards. Grantee will construct its system using applicable City codes and the following safety codes and construction standards in its construction practices:

NEC - NATIONAL ELECTRICAL CODE

NESC - NATIONAL ELECTRICAL SAFETY CODE

OSHA - OCCUPATIONAL SAFETY AND HEALTH ACT

WISHA - WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

8.5 Workmanship. Grantee will construct its cable system in a workmanlike manner, consistent with Sections 13.5(A) and (B).

8.6 Quality of Service during Rebuild. Grantee agrees to provide service at a level consistent with current FCC standards.

8.7 Construction and Work Permits, Licenses and Permission. Grantee agrees to file for and secure any necessary permits and/or licenses prior to commencement of any activity in the publicrightsofway.

8.8 Construction Area Safety and Cleanup. Grantee agrees to inspect its contractor(s) on a regular basis and ensure that both its personnel and contractor(s) provide cleanup of all workplaces and adhere to industry safety as well as, all State and local safety standards.

8.9 Component and System Tests, Records and Test Points . Grantee will initially test all active components before installation into the system. Initial proof of performance will meet or exceed the minimum requirement set forth in FCC Rules & Regulations Part 76, SubPart K "Technical Standards." There will be a test point located at the extremities of each node.

8.10 Service Cutover Process . Grantee agrees to adopt the necessary procedures to ensure minimal disruption of service to subscribers when activating and converting subscribers to the rebuilt system.

8.11 Service Connections .

(A) Standard Installation - Unwired Dwelling Unit. Standard installation of an unwired dwelling unit shall be installation of cable service to the Subscriber's dwelling unit located up to 125 feet from the existing distribution system, plus additional inside wire and at least one outlet sufficient to receive Cable Services.

(B) Standard Installation - Prewired Dwelling Unit. Standard installation of a rewired dwelling unit shall be installation of cable service to the Demarcation Point located on the Subscriber's property up to 125 feet from the Subscriber's property line, sufficient to receive Cable Services and where the rewired equipment will allow the cable system to meet all FCC technical requirements.

(C) Non-Standard Installations. Any installation of cable service that requires the installation of facilities from a point more than 125 feet from the Subscriber's property line to: (1) in the case of a prewired dwelling unit, the Demarcation Point; or (2) in the case of an unwired dwelling unit, a point not less than 12 inches from the exterior wall of the dwelling unit; or (3) any underground installation in an area where plant facilities are not underground; or (4) any installation calling for multiple outlets in a dwelling unit; shall be considered a Non-standard Installation.

(D) Rates and Charges. Charges for Standard Installations may not exceed the Grantee's published rates. Charges for Non-standard Installations shall not exceed the Grantee's published hourly service charge for non-standard transactions, and may be applied only to that portion of the installation defined as a Non-standard Installation in Subsection (C) above.

## SECTION 9. TECHNICAL OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS

9.1 Technical and Safety Standards. Grantee will maintain its system using applicable City codes and the following safety codes and construction standards: NEC - NATIONAL ELECTRICAL CODE; NESC - NATIONAL ELECTRICAL SAFETY CODE; OSHA - OCCUPATIONAL SAFETY AND HEALTH ACT; WISHA - WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT.

9.2 Network Monitoring and Repair. Grantee shall monitor all power supplies and fiber nodes, utilizing the latest in status monitoring techniques and will affect repairs within a 24hour time period as required by applicable FCC Rules and Regulations.

9.3 Routine Maintenance and Performance Testing. The Grantee will maintain the Cable System by providing routine maintenance and performance testing to meet the requirements of FCC Rules and Regulations; Part 76, including bi-annual proof of performance tests.

9.4 Spare Parts. The Grantee shall have immediately available a sufficient supply of spare parts to effect repairs in accordance with the requirements of this Franchise.

## SECTION 10. SUBSCRIBER RELATIONS AND SERVICE STANDARDS COMPLAINT

### PROCEDURE

#### 10.1 Office Hours and Telephone Availability.

(A) The Grantee shall maintain a local or toll free call telephone subscriber service access line which will be available to its Subscribers 24 hours a day, 7 days a week.

(B) Trained company representatives shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(C) After Normal Business Hours, the subscriber service access line may be answered by an answering service, automated response system or an answering machine. A qualified Grantee representative shall respond on the next business day to inquiries received after Normal Business Hours.

(D) Under Normal Operating Conditions, telephone answer time by a subscriber representative, including wait time, shall not exceed 30 seconds after the connection is made. If the call must be transferred, transfer time shall not exceed 30 seconds. These standards shall be met not less than 90% of the time under Normal Operating Conditions, as measured on a quarterly basis.

(E) Under Normal Operating Conditions, the subscriber shall receive a busy signal less than 3% of the time.

(F) Grantee shall maintain a file of all Subscriber complaints not resolved by phone that is available for City inspection. The file will include subject of complaint, how it was resolved, when it was resolved, and any additional action taken by caller or Grantee. In addition, the City may order periodic sampling of the number and general categories of complaints resolved by phone during the sampling period, not to exceed five (5) days per quarter.

(G) Grantee shall establish at least two Subscriber Service Centers for pick up and return of equipment and payment of bills. The Subscriber Service Centers and any other bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located at safe, visible sites within the Grantee's service area. The Subscriber Service Centers shall be handicapped accessible and located along mass transit routes.

10.2 Installations, and Subscriber Service Calls. Under Normal Operating Conditions, each of the following standards shall be met not less than ninety-five percent (95%) of the time measured on a quarterly basis.

(A) Standard Installations for Dwelling Units shall be performed within seven business days after an order has been placed, unless otherwise requested by Subscriber.

(B) The "appointment window" alternatives for installations, service calls, and other activities shall be, at maximum, within a four-hour block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside Normal Business Hours at the request of and for the convenience of the Subscriber.

(C) The Grantee may not cancel an appointment with a Subscriber after the close of business the day before the appointment unless Grantee is prevented from making the appointment by any condition outside its control. In the event cancellation occurs, the appointment must be rescheduled in accordance with Section 10.2(D).

(D) If a representative of the Grantee will not be able to keep an appointment, the Grantee shall reschedule the appointment at a time convenient for the Subscriber.

(E) If the cable signal on any cable channel is below FCC technical standards for more than two weeks, Grantee shall provide upon the Subscriber's request a proportionate rebate for the entire period that the Cable channel is below FCC technical standards. The Grantee shall, upon the Subscriber's request, provide a credit of one day's cable service for each outage within Grantee's control lasting more than four hours in any 24-hour period.

(F) If a Subscriber requests disconnection of any or all services, billing for affected services shall end on the same day. The Subscriber shall not be responsible for Cable Services delivered after the request. The Grantee must refund any credit balance owed the Subscriber, less any owed or disputed amounts, within fifteen (15) business days after the close of the Subscriber's billing cycle following the return of the equipment and request for disconnection.

(G) The Grantee shall provide Subscribers with at least 24 hours' advance notice of planned service interruptions anticipated to last more than four hours. Interruptions shall occur only during periods of minimal use of system and shall not occur except for good cause.

### 10.3 Communications Between Grantee and Subscribers.

(A) Identification. Subscriber service representatives shall appropriately identify themselves. Field representatives shall provide Grantee-issued picture identification and, upon request, means of verification.

(B) Notifications to Subscribers.

(1) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscriber's Dwelling Units, and at any time upon request:

(a) products and services offered;

(b) prices and options for Programming services, conditions of subscription to Programming and other services and policies concerning changes in services offered, notification of changes, disconnection and service downgrades;

(c) installation and service maintenance policies, including the Subscribers' responsibilities for equipment;

(d) instructions on the use of Cable Services;

(e) channel positions of Programming;

(f) billing and complaint procedures, including the address and telephone number of Grantee's cable office, Grantee's policies on deposits and credit balances, returned check charges, refunds for disruption of service or poor reception, and the address and telephone number and description of services of the cable office of the City of Seattle.

(g) policies concerning protection of Subscribers' privacy.

(2) Subscribers shall be notified of any changes in Programming, services or channel positions as soon as possible in writing and, when it becomes technologically feasible, through announcements on the Cable System. Subscribers shall be given a description of the changes, their options (including costs) for changing services they receive, phone number for questions and effective date. Notice must be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding subsection.

(3) Affected Subscribers shall have 30 days after a change in services or rates to downgrade their service without charge.

(4) All promotional materials advertising Cable Services shall accurately disclose price terms. Grantee's subscriber service representatives shall make the price of payperview and payperevent programming clear before an order is taken. Grantee shall distribute collateral/promotional material in multiunit buildings only with the approval of the building owner. Grantee shall not condition the provision of Cable Services on the receipt of such approval.

(5) Grantee shall not charge Subscribers for any services they have not affirmatively requested; provided, this subsection shall not prevent adding programming to an existing tier.

(C) Billing.

(1) Bills shall be clear, concise and understandable. Bills may be fully itemized to the extent allowed by law and this Franchise, provided that all bills shall clearly reflect only a single total amount due. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Franchise fees, costs and taxes shall be itemized in a manner that accurately and fairly portrays the basis for the taxes and fees.

(2) In case of a billing dispute, the Grantee shall respond within twenty (20) days. The first response to a specific complaint may be oral if provided within ten (10) days, and if subsequent responses to the same complaint are in writing. Grantee shall also provide a written response when specifically requested by the Subscriber.

(3) Bills shall not be past due sooner than 30 days after the date of mailing. The closing date of the billing cycle shall be shown on the bill.

(D) Refunds. Refund checks shall be issued promptly, as provided in Section 10.2(F).

(E) Credits. Credits for service shall be issued no later than the Subscriber's next billing cycle or 30 days after the determination that a credit is warranted, whichever is sooner.

(F) Delinquent Account Disconnection. Grantee shall send written disconnect notices, which may be included in the bill if visually distinct from the rest of the bill, clearly stating the amount past due that must be paid to avoid disconnection, the total amount due, and the Customer Service phone number. If the Subscriber does not respond, Grantee may disconnect the Subscriber ten days after the disconnect notice is sent.

(G) Deposits. Deposits shall accrue interest at a fair market rate. Within ten (10) days after termination of service, Grantee shall repay any deposit with a statement showing accrued interest to the subscriber, less any sums owed to Grantee.

#### 10.4 Subscriber Rights.

(A) Discrimination Prohibited. Grantee shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to nondiscrimination.

(1) All Grantee rates and charges shall be published and nondiscriminatory. Except as provided hereunder, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Grantee's Franchise Area. Nothing in this section shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns or discounted rates for provision of Cable Services to multiple unit buildings.

(2) Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Access Programmers or any other Persons on the basis of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Grantee's Franchise Area.

(3) The Grantee shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Subscriber to waive such rights as a condition of service.

(B) Privacy.

(1) Grantee shall not observe or record, or allow any third party to observe or record, the viewing habits or communications of Subscribers over the Cable System. Grantee shall not reveal to any third party which Cable Services an individual Subscriber receives. In the event that the annual Subscriber ascertainment indicates 50% of Subscriber have complained about privacy, Grantee shall make such adjustments to its procedures within three months as are reasonably necessary to accommodate the cablerelated community needs relating to privacy.

(2) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits or communications over the Cable System by the name or address of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the express, written consent of the Subscriber to whom the Personalized Data pertains, except as otherwise expressly authorized by federal law. For purposes of this section, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

(3) Grantee shall be subject to the provisions of federal law regarding limitations on Grantee's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

(4) Grantee shall not activate twoway communications without the written consent of the Subscriber, and any Cable Service shall be revocable at the discretion of the Subscriber. The Grantee shall not use the twoway communications capability of the system or any other Cable Service for unauthorized or illegal Subscriber surveillance of any kind. Written consent, as required herein, shall not be required of any Subscriber by Grantee as a condition of receiving Cable Services.

(C) Services to People With Disabilities. Grantee shall make Cable Services available to the maximum practical extent to persons with disabilities. Grantee shall provide telecommunication devices for the deaf (TTY) at the cable office during normal business hours and shall disseminate information on the cost and availability of closedcaptioning



equipment for the hearing impaired and such other services to disabled persons as the City may determine.

(D) Permission of Property Owner or Tenant for Installation. Grantee shall not install or attach any of its Facilities to any Dwelling Unit or other property without first securing the written permission of the owner or tenant of any property involved, or of such other person who has the right to approve or disapprove the attachment, except where there is an existing utility easement. If such permission or easement is later revoked, the Grantee, at the request of the person with the right to approve or disapprove the attachment, shall promptly remove any of its Facilities and promptly restore the property to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal. Provision of Cable Service may not be conditioned on any right of entry agreement other than as specified in this Agreement. However, this provision shall not affect the Grantee's right to furnish additional consideration in exchange for such an agreement.

## SECTION 11. COMPENSATION AND AUDITING

11.1 Amount of Compensation. In consideration of permission to use the Rights of Way of the City, the Grantee shall pay annually as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

11.2 Effect of Additional Commitments on Franchise Fees. Except as specifically provided in this Franchise or permitted by federal or state law, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay the franchise fee. Although the total sum of franchise fee payments and additional financial and other obligations of this Franchise may exceed 5% of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the sole franchise fee provided for in this Franchise is the franchise fee called for in Section 11.1 and that no other obligation of Grantee under this Franchise constitutes a franchise fee, nor shall any such obligations be offset or credited against any franchise fee payments due to the City, except as specifically provided by this Franchise, other City Ordinance, or federal or state law.

### 11.3 Payments and Monthly Reports.

(A) Payments. Grantee's franchise fee payments to the City shall be computed monthly following the effective date of this Franchise. Each payment shall be due and payable at the same time as the Utility Business and Occupation Tax payment for the same period.

(B) Monthly Reports. Each payment shall be accompanied by a written report to the City, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the City and shall include revenue by product category.

11.4 Interest on Late Payments. Payments not received within fortyfive (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed 18% in any event.

### 11.5 Franchise Fee Credits.

(A) To the extent that the Grantee pays a Utility Business and Occupations (Utility B&O) tax above the Utility B&O tax rate for telecommunications services, the Grantee shall be credited against the franchise fee obligation as follows:

(1) For the first three (3) years of the term of this Franchise, the credit shall be 75% of the difference between the Grantee's Utility B&O tax rate and the telecommunications tax rate.

(2) During each year after the third year of the term of this Franchise, the credit shall be set by ordinance and shall be a minimum of 37.5% of the difference between the Grantee's Utility B&O tax rate and the telecommunications tax rate.

(B) Should the City reduce the rate of its business taxes levied on Grantee by an amount equal to four percent (4%) of Grantee's Gross Revenues, the City may suspend the above credit for the franchise fee and may impose a charge, in accordance with applicable law, to be established by ordinance in an amount not to exceed One Dollar (\$1.00) per month per Subscriber, to cover its costs for cable related purposes, including without limitation, PEG access costs and costs related to the City's connection to the Cable System for Internet communications.

(C) The City's decision to tax certain of Grantee's services, such as telecommunications services, if any, at different rates from those applicable to traditional cable television services shall not be deemed a reduction of rates for purposes of Subsection (C) above.

#### 11.6 Acceptance of Payment and Recomputation.

(A) No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within six (6) years of the date payment was due. If the City requests in writing that the Grantee provide, or cause to be provided, any information reasonably within the scope of the audit, and the Grantee fails within 30 days of receipt of the request to provide such information or cause it to be provided, then the six (6) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee such failure continues and Grantee shall pay liquidated damages in the amount of \$500.00 per day of such failure.

#### 11.7 Audits.

(A) The City reserves the right to conduct audits relating to matters arising under this Franchise or to retain an independent Certified Public Accountant to conduct such audits. In the event an audit results in a determination that Grantee has underpaid any franchise fee or tax obligation arising under this Franchise by 5% or more, or materially misstated financial information in any report furnished to the City, Grantee shall reimburse the City for the costs of the audit.

(B) Grantee shall pay to the City any amounts any audit indicates are owed following an independent review of such audit. Such payment shall be made whether or not the Grantee's obligation for such payment arose before or after the effective date of this Franchise.

## SECTION 12. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND.

### 12.1 Indemnification.

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of the Grantee, including without limitation any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee or its Parent Corporations, their agents, or their employees, and including any neglect or omission of Grantee to keep its system in a safe condition. This obligation to indemnify and hold the City harmless shall include the obligation to pay attorneys' fees, expert fees, and all other costs of defending any indemnified claim and all such costs incurred in recovering against Grantee under this indemnity provision. To the maximum extent permitted by law, this indemnity obligation shall not be extinguished or reduced in the event an act or omission of the City is a concurrent cause of the claim or loss, but no indemnity shall be owed in the event the sole cause of any claim or loss is the sole negligence of the City or a willful act or omission of the City in violation of this Franchise. Grantee shall consult and cooperate with the City in the conduct of the City's defense. The City shall fully cooperate with the Grantee in said defense.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities located on City property or rightofway in a timely manner in accordance with Sections 13.3, 13.4, and 13.5 and a relocation schedule furnished Grantee by the City in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct, or failure of necessary third parties to cooperate with such relocation.

(C) Duty to Give Notice and Tender Defense. The City shall give the Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by this indemnity. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the right and duty to accept the tender and thereafter to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.

(D) Exception to Duty to Tender Defense. Notwithstanding the above, the City shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Grantee and the City.

12.2 Insurance. Grantee shall maintain insurance coverage satisfactory to the City in the amounts and coverage specified below. At the time this Franchise begins, Grantee shall have submitted such certificates of its insurance coverage as the City may reasonably require and Grantee shall have made such additions or alterations to its coverage as the

City shall require. Grantee shall thereafter provide the City with 30 days' written notice of any anticipated changes in the amounts or substance of its insurance coverage as herein required, and shall not make such changes without the City's written consent. Grantee shall arrange for the City to be an additional named insured on any policies of Grantee designated by the City, and shall also provide such certificates of insurance as the City may reasonably request from time to time. The amounts and coverage of insurance shall be: commercial general liability -- \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit; automobile liability -- \$1,000,000 combined single limit for bodily injury and property damage.

12.3 Construction Performance Bond. Before beginning any construction work in or under the City streets requiring a street opening permit, Grantee shall furnish a performance bond to the City as is required for street opening permits. The bond shall run to the City with good and sufficient surety approved by the City and shall be maintained in a sum equal to the anticipated cost of the work to be performed, but not to exceed Two Million Dollars (\$2,000,000). The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements under this Section. The bond shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 14, General Street Use and Construction. Grantee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated upon final approval of Grantee's construction work in or under the City streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section.

#### 12.4 Security Fund/Letter of Credit.

(A) Amount. The Grantee's Franchise shall not become effective until the Grantee posts with the City a security fund in the form of a cash security deposit or an irrevocable letter of credit, or a combination of the two in an amount equal to seventy-five cents (\$0.75) per Subscriber in the Franchise Area, but in no event less than \$20,000. It is the Grantee's responsibility to maintain this Security Fund throughout the Franchise term. Before any letter of credit provided to satisfy the Security Fund obligation expires, the Grantee must renew it or replace that letter of credit with a cash deposit, letter of credit, or combination of the two in an amount and in a form that satisfies its obligations under this Section.

(B) Use. The City may draw on the Security Fund to ensure the Grantee's faithful performance of the Franchise in accordance with applicable law. If Grantee fails to perform its obligations under the Franchise in any respect, including making any payment to the City required by this Franchise or by applicable law, including liquidated damages, and reimbursable costs incurred by the City, the City may, after ten (10) days' written notice to the Grantee, withdraw that amount from the Security Fund, a processing fee equal to five percent (5%) of the sum withdrawn and interest for the period between any loss and the withdrawal. The City shall notify the Grantee of the amount and date of the withdrawal.

(C) Restoration of Fund. Within thirty (30) calendar days after the City gives Grantee written notice that an amount has been withdrawn from the Security Fund, the Grantee must deposit a sum of money in the Security Fund sufficient to restore it to the original amount. If Grantee fails to do so, such failure to restore shall be a material breach of this Franchise.

(D) Return of Fund. If the Franchise terminates for any reason, and the Grantee has ceased to provide service in the City, the balance of the Security Fund that remains following termination of the Franchise and satisfaction of all of Grantee's obligations secured by the fund shall be returned to Grantee. The City shall be under no obligation to return funds until a reasonable time, but no longer than 180 days, has elapsed for the City to determine that all such obligations have been satisfied.

(E) Letter of Credit. Any letter of credit used to satisfy any portion of the Security Fund requirement must:

(1) Be issued by a bank licensed to do and doing business in the State of Washington;

(2) Be irrevocable;

(3) Provide for automatic renewal of the letter unless the bank has given the City written notice by certified mail at least sixty (60) days prior to expiration of the letter;

(4) Provide that the City may draw against the letter at any time prior to expiration of the letter;

(5) Provide that the City may draw against the letter and hold the funds in escrow after termination of the Franchise:

(a) if the City has filed an action;

(b) if the City has sought to draw against the letter prior to termination and Grantee has contested the action or appealed the notice and order; or

(c) if the bank or the Grantee has challenged or appealed the draw.

## SECTION 13. GENERAL USE OF AND CONSTRUCTION IN RIGHT OF WAY

13.1 Relationship With Other Laws. Construction work and maintenance of any and all facilities within the City's Rights of Way shall be done in accordance with the Seattle Municipal Code, including but not limited to, SMC Title 11, SMC Title 15, and SMC Ch. 21.60; City of Seattle Standard Specifications for Road, Bridge and Municipal Construction; City of Seattle Standard Plans for Municipal Construction; City of Seattle Traffic Control Manual for In-Street Work; Seattle Engineering Department Street and Sidewalk Pavement Opening and Restoration Rules (Director's Rule 94-8); any other applicable ordinance, rule or policy; and any amendments thereto. The provisions of Section 13 are meant to be supplemental to the above provisions. In the event of a conflict between the above provisions and this section, the above provisions shall prevail.

### 13.2 Construction.

(A) All construction and maintenance of any and all Facilities within the City's Rights of Way incident to Grantee's Cable System shall be and remain the Grantee's responsibility regardless of who performs the construction. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the City's Rights of Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee, and shall pay all inspection fees and other costs incurred by the City as a result of work authorized by such permit.

(B) Before beginning any construction, Grantee shall provide the City with a construction schedule for work in the City's Rights of Way. As Grantee's construction of Facilities in the City's Rights of Way is completed or its location subsequently altered during the term of the Franchise, Grantee shall periodically provide the City Cable Office with maps showing the location of the installed Facility in the City's Rights of Way, as built.

(C) Before beginning any work in the City's Rights of Way, Grantee shall apply for and obtain appropriate permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

(D) When Facilities pass over or under private or publicly owned property it shall be Grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work.

13.3 Relocation. The City shall have the right to require Grantee to change the design or location of any of Grantee's Cable System within the City's Rights of Way when the public convenience or public interest would be served by such a change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate or redesign

any such Facilities by the date reasonably established by the City, the City may effect such removal or relocation or redesign, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the City's Rights of Way, the City shall provide Grantee with an alternate location within the City's Rights of Way. Nothing herein shall prevent Grantee from participating in any alternative funding for relocation.

#### 13.4 Restoration of City's Rights of Way.

(A) Whenever Grantee disturbs the surface of any Right of Way for any purpose, the City shall be responsible for restoration of the City's Right of Way and its surface within the area affected by the excavation unless the City authorizes the Grantee in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision shall be paid by the Grantee. All excavations made by Grantee in the City's Rights of Way shall be properly safeguarded for the prevention of accidents.

#### 13.5 Maintenance and Workmanship.

(A) Grantee's Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the City's Rights of Way by or under the City's authority.

(B) Grantee shall operate its Cable System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.

(C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Right of Way.

13.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Right of Way, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any City Rights of Way, the Grantee shall, at the City's request, submit to the City a statement and asbuilt plans describing all existing Facilities, whether authorized by franchise, permit, license or other prior right, and depicting the location of all such Facilities with such specificity as the City may reasonably require. Such Facilities shall immediately be subject to the terms of this Franchise, and shall be brought into compliance with it as soon as practicable. In the event the new facilities or annexed area have characteristics that make literal application of any term of the Franchise inappropriate, the parties will negotiate in good faith to modify the Franchise solely with respect to such characteristics and only to the extent necessary to achieve consistency with the purposes of this Franchise.



13.7 Reservation of City Right of Way Rights . Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City Right of Way, or public work or improvement in the City's Rights of Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's system will interfere with the construction, maintenance, or repair of any City Right of Way or public work or improvement in the City's Rights of Way, at its own expense the Grantee shall remove or relocate its system as the City directs. Should the Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

13.8 Reservation of Rights and Privileges . Nothing in this Franchise shall deprive the City of any rights or privileges which it now has, or which may hereafter be conferred upon it, including any rights to exercise its police powers in the regulation and control the use of the Rights of Way.

13.9 Street Vacation . If any street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities from such street and the expense thereof shall be paid by Grantee.

13.10 Discontinuing Use of Facilities . Whenever Grantee intends to discontinue using any Facility or capacity within the City's Rights of Way, Grantee shall submit for the Director of Engineering's approval a complete description of the Facility and the date on which the Grantee intends to discontinue using the Facility or capacity. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such Facility remain in place, the Director of Engineering may require the Grantee to remove the Facility from the City's Right of Way or modify or maintain the Facility or capacity to protect the public health and safety or otherwise serve the public interest. The Director of Engineering may require the Grantee to perform a combination of modification, maintenance, and/or removal of the Facility and/or capacity. Grantee shall complete such removal or modification in accordance with a schedule set by the Director of Engineering. Until such time as Grantee removes or modifies the Facility as directed by the Director of Engineering, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the City's Right of Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

13.11 Hazardous Substances.

(A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous Substances relating to Grantee's Cable System in the City's Rights of Way. For purposes of Section 14.11, "Hazardous Substances" shall be all substances so characterized in RCW 70.1050.020(5).

(B) Grantee shall maintain and inspect its Facilities located in the City's Rights of Way and immediately inform the City of any release of Hazardous Substances. Upon reasonable notice to Grantee, the City may inspect Grantee's Facilities in the City's Rights of Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Facilities. In removing or modifying Grantee's Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto; provided, however, if it is determined that Grantee's owned facilities did not cause the release of hazardous substances, Grantee shall have no duty to remove such substances.

(C) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances arising from, connected to or incident to Grantee's Facilities in the City's Rights of Way.

13.12 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables and other facilities underground. Grantee shall install its cables or other Facilities underground wherever and at the same time existing utilities in the immediate vicinity are installed underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable costsharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that a telecommunications utility or a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

13.13 Construction Codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables, and other appurtenances from the property in question at Grantee's expense.

13.14 Construction and Use of Poles. Grantee shall negotiate and enter into pole attachment agreements with utilities maintaining poles in the Grantee's franchise area on terms acceptable to Grantee and the affected utilities and in compliance with SMC Ch. 15.32; provided, any obligations to provide fiber or capacity that might be imposed on Grantee under SMC Ch. 15.32 and any amendments thereto, shall be deemed fully satisfied for the term of this franchise and any extensions by Grantee's agreement to

install, at the time of Grantee's own construction, fiber for the City in accordance with the following provisions:

(A) In the course of Grantee's own construction of its optical fiber system Grantee shall include at the City's request additional fiber for the City's exclusive use for governmental purposes. Such purposes shall not include any lease, license, or other transfer to any third party of the right to use such fiber and shall not include any commercial use. However, such purposes may include the following uses, for which the City may receive payment to defray its costs of installation and maintenance:

(1) The City may share use of the fiber with other governments for governmental purposes where signals are mixed with City signals in the same transmission system; and

(2) The City may make fibers available to Schools as distinctly leased fibers or as part of a shared transmission system as described above.

(B) The City shall bear the incremental cost of adding the additional fiber during Grantee's construction and the incremental cost, if any, of maintenance.

(C) The total amount of fiber installed for the City under this provision shall not exceed thirty (30) miles in distance, nor two hundred (200) fiber miles (number of fibers in a sheath times distance) without the express consent of Grantee.

(D) Grantee's agreement to provide fiber under this section shall not be construed as acquiescence in or admission of the City's authority to impose such obligations unilaterally as set forth in Ordinance No. 116633. The City's agreement to these provisions does not constitute acknowledgement of any lack of the City's authority to impose obligations unilaterally as set forth in Ordinance No. 116633.

13.15 Tree Trimming. The Grantee must submit all construction plans and/or pruning plans to the City for initial review before any work begins. This review may take place concurrently with reviews required by the Seattle Engineering Department.

## SECTION 14. TRANSFER OF GRANTEE'S CABLE SYSTEM

### 14.1 Prior Consent of City.

(A) Transfer Defined. For purposes of Section 15.1, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, lease (not including lease of channels or fiber capacity), and whether voluntary or involuntary.

### (B) City Approval of Transfers.

(1) Neither this Franchise nor any substantial property owned and operated by Grantee by authority of this Franchise shall be Transferred without the prior consent of the City. The City's granting of consent in one instance shall not affect the requirement of consent in any other instance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City an executed counterpart or certified copy thereof. For purposes of this Section, "substantial property" means any property the transfer of which would substantially affect Grantee's performance of its obligations under this Franchise.

(2) In determining whether the City will consent to any Transfer, the City may inquire into the qualifications of the prospective party. Grantee shall assist the City in any such inquiry. Without restricting any rights the City may have under federal law to impose conditions upon a transfer of all or part of this Franchise, the City may condition any Transfer upon such conditions as it reasonably deems appropriate to enable the City to enforce this Franchise and to assure continued performance pursuant to the terms of this Franchise.

(3) Nothing contained in Section 14.1 shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of Grantee's Cable System, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing the acquisition of equipment or for the acquisition, construction and operation of Grantee's Cable System, without the City's consent, but any such mortgage, pledge or assignment shall be subject to all other rights of the City under this Franchise.

14.2 Change in Control. Grantee shall promptly notify the City of any proposed Transfer or acquisition by any other party resulting in a change of control of the Grantee or Guarantor of performance. Such change in control shall make this Franchise subject to revocation unless and until the City shall have consented thereto.

## SECTION 15. CITY RIGHT TO PURCHASE

### 15.1 Purchase of Grantee's Cable System After Termination or Expiration.

(A) Subject to the requirements of federal law, if the City has terminated this Franchise as provided in Section 19, or if the initial term of this Franchise has expired without the franchise being renewed or extended, and if the City has so ordered by ordinance, the Grantee shall continue its operations for a period of up to 270 additional days. During this period, the Grantee shall not Transfer any portion of its Cable System to any other Person, including parts of the system rented, leased or leasepurchased from others by the Grantee, without the prior consent of the City.

(B) Within 30 days of the effective date of termination or following the expiration of the term of this Franchise, if the City has not otherwise renewed or extended the Franchise, the Grantee shall submit a report (hereafter referred to as the "System Reports") to the City setting out Grantee's assessment of the book value of the assets of Grantee's Cable System and their fair market value and the methodology, assumptions and limiting conditions underlying the Grantee's appraisal. In addition, Grantee shall provide such further information regarding its technical and customer operations, contractual or other legal obligations, and financial history and current condition as the City may request.

(C) At any time within 60 days after receiving the System Report, the City may notify the Grantee that it desires to acquire by purchase all or a portion of Grantee's Cable System.

(D) For purposes of Section 15.1, the price of Grantee's Cable System shall be the fair market value, less any offsets, as determined by mutual agreement between the City and the Grantee. If the City and Grantee are unable to agree within 120 days after the City gives notice of desire to purchase under Section 15.1(C), then the City may demand that such price and/or any offsets the City may claim be determined by arbitration, as provided for in Section 21.2, in which case, following the arbitrator's determination, the City shall have the option to purchase the Cable System for the price determined by the arbitrator. In the case of the expiration of the Franchise without renewal, fair market value shall be reduced by the amount of any lien, encumbrance, or other obligation of the Grantee which the City may assume.

(E) For purposes of Section 15.1, book value shall mean the fully depreciated assets of the Grantee.

(F) In the event of the City's acquisition of all or portions of Grantee's Cable System, as provided in Section 15.1, Grantee shall consent to assignment of any rental, lease, and leasepurchase arrangements for Grantee's Cable System or any Facilities and shall use all best efforts to obtain consent to assignment, to the extent any existing and future rental, lease, and leasepurchase arrangements for Grantee's Cable System or any Facilities require such consent, and shall cause any entity it controls to so consent.

## SECTION 16. REGULATION OF RATES AND CHARGES

16.1 City Regulation. To the extent consistent with state and federal law, Grantee's rates and charges shall be subject to City regulation and approval.

### 16.2 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of all rates and charges related to providing Cable services under this Franchise, in a form satisfactory to the City.

(B) Grantee shall provide a complete schedule of rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels. Upon the City's request, Grantee shall furnish additional detail or explanation in writing.

### 16.3 Changes in Rates and Charges.

(A) Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any proposed change in rates and charges.

(B) Grantee shall be entitled to increase regulated rates only as provided in this Franchise. Grantee and the City shall follow the process for establishing increases in rates and charges set forth in the City's Master Cable Ordinance, SMC Ch. 21.60, as now constituted or hereafter amended. Grantee shall provide all information reasonably requested by the City.

### 16.4 Reasonable Discounts Provided.

(A) Economically Disadvantaged. Grantee shall provide reasonable discounts of not less than 10% on basic service rates, installation, and equipment rental charges if necessary to receive Basic Service, to Subscribers with low incomes as qualified in the City's Rate 26, 27 program.

16.5 Multiple Unit Buildings. Grantee shall ensure that rates charged by Grantee to residents of multiple unit buildings shall not exceed the charges paid by residents of single family homes. Grantee may not condition provision of services to multiple unit buildings on any requirement not imposed on other Subscribers, except as expressly provided in this franchise. Grantee may not condition provision of services to multiple unit buildings on an exclusive use agreement with Grantee. Grantee may offer a building owner the option of a long term agreement in return for installation of internal wiring or other telecommunications improvements unique to the building, but Grantee must offer the alternative of a no term agreement to building owners who wish to contract directly

for installation by a contractor approved by Grantee and in accordance with Grantee's generally applicable technical standards.

16.6 Regulation of Equipment for Hearing Impaired. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Standard Cable Service by hearing impaired individuals.

16.7 Downgrade Charges.

(A) Grantee may impose Downgrade Charges only if the subscriber has been notified, at the time of initiating Cable Services, and annually thereafter, of Grantee's Downgrade Charges.

(B) Affected subscribers shall have 30 days after a retiering or increase in rates to downgrade their service without charge.

16.8 Reserved City Authority. Subject to Section 16.1, the City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992, as now in effect or hereafter amended.

## SECTION 17. RECORDS AND REPORTS

17.1 Open Records. Grantee shall maintain Records of its operations that are open and accessible to the City. The City shall have the right to inspect such Records of the Grantee as are reasonably necessary to monitor compliance with the Franchise at a location in the City during normal business hours and upon reasonable notice. If any such Records are under the control of an Affiliated Entity or a third party or are stored in a computer, Grantee shall promptly take steps to secure access to such records as are reasonably necessary for the City's inspection.

17.2 Annual Reports. Grantee shall annually present a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than 120 days after the close of its fiscal year. The Annual Report shall include information for the Grantee's operations within the City for the immediately preceding year, including, but not limited to:

- (A) System structural and operating information;
- (B) Changes, additions or deletions made in the Cable System since the last annual report. Complete and accurate system maps, which shall include but not be limited to detail of trunks, distribution lines, and nodes, as described in Section 13.2(B), shall be available at Grantee's offices for City review. In addition, the City may request a copy of Grantee's system maps annually as needed to update the City's maps.
- (C) System ownership, including all levels of Affiliated and Parent Corporations and controlling ownership percentages;
- (D) An organization chart for Grantee, listing its officers, directors, department heads, and supervisors for major activity centers by category including names positions and business addresses.
- (E) Total Cable System mileage and number of homes passed;
- (F) While Grantee is serving as initial Public Access Manager, a summary of all applications for equipment, facilities, and channel use, showing the disposition of each, training activities, public communications activities, and staffing;
- (G) Cable Services provided on Grantee's Cable System, including services begun or dropped during the previous year;
- (H) A schedule of all Grantee's rates and charges with notations of changes occurring during the year and the dates of such changes.
- (I) For Grantee's Cable System in the City: (a) miles of system plant; (b) homes passed; (c) numbers of basic and expanded basic subscribers; and (d) number of pay units.



(J) A statistical summary of telephone responsiveness, identifying on a monthly average basis the percent of time the telephone system has all trunks busy, the number of callers to Grantee's Subscriber service or repair lines who fail to reach a Subscriber service representative in less thirty (30) seconds, and providing any other information the City reasonably deems necessary to determine if Grantee has met the performance standards of Section 9.

(K) A summary of all Cable System outages in a form acceptable to the City. An outage includes a loss of one or more video or audio channels, but does not include instances where the sound or video is lost prior to its receipt by the Cable System.

(L) The current complaint procedures followed by the Grantee and a general summary of complaints by type.

(M) Annual proof of performance tests, showing performance of the Cable System with respect to applicable FCC technical standards.

(N) Copies of current form contracts between subscribers and the Grantee.

(O) Grantee's development or incorporation of new technology on Grantee's Cable System, such as addressability, interactivity, payper event Programming, teletext, data communications or other entertainment and nonentertainment services.

(P) A general summary of requests and usage patterns for Leased Access Channels, if any.

(Q) A description of the progress made in construction and completion of any system Rebuild or Upgrade.

(R) A list of all petitions, applications, communications, and reports having a direct and material effect on the Cable System, submitted by the Grantee and its Parent Corporations to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency. Grantee shall make copies of any such Documents and any related communications with the respective agencies available to the City upon request.

(S) A copy of its equal employment opportunity plan and Form 395A filed with or submitted to the FCC.

(T) Financial information as follows:

(1) Financial statements for Grantee's Seattle Area Cable System and, separately, for its Cable System within the City, prepared in accordance with generally accepted accounting principles. For purposes of this subsection, "Seattle Area Cable System" means the regional Cable System of which Grantee's Cable System serving the Franchise Area is a part.

(2) Such other information as the City may reasonably request;

(3) Planned construction, Upgrade or Rebuild activity of Grantee's Cable System within the City for the current Year and the projected costs of such activity;

(4) TeleCommunications, Inc.'s (or ultimate parent company) and TCI West's annual corporate reports, including their audited financial statements;

(5) Statement describing joint ventures or partnerships in which the Grantee owns at least a 5% interest.

17.3 Public Hearing. If directed by the City, the non-confidential and non-proprietary portions of Grantee's Annual Report shall be presented at a public hearing at which Grantee shall summarize the contents of the Annual Report and members of the general public may comment thereon.

17.4 Reports of Regulatory Violations. Grantee shall provide copies to the City of any report, order, consent decree, or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Services under this Franchise.

17.5 Public Records.

(A) Grantee acknowledges that information submitted to the City is subject to the Washington Public Disclosures Law, and is open to public inspection.

(B) Grantee may identify information that the Grantee believes is non-disclosable, such as trade secrets, submitted to the City as confidential. Grantee shall prominently mark any information for which it claims confidentiality with the mark "Confidential", in letters at least onehalf (1/2) inch in height, prior to submitting such information to the City. The City shall treat any information so marked as confidential except as provided below. If the City receives a request for confidential information, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. The City shall retain the right to determine whether it is required to release the requested confidential information under applicable law. If, after considering Grantee's written response, the City determines that it is required to release all portions of the requested information, the City shall provide the Grantee notice to that effect a minimum of five (5) business days prior to releasing the requested information.

## SECTION 18. EQUAL EMPLOYMENT OPPORTUNITY

18.1 Non-Discrimination and Affirmative Action. During the performance of this contract, the Grantee agrees as follows:

The Grantee will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

The Grantee will, prior to commencement and during the term of this contract, furnish to the Director of Human Rights (as used herein Director means the Director of the Human Rights Department or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the Grantee in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision.

If upon investigation the Director finds probable cause to believe that the Grantee has failed to comply with any of the terms of these provisions, the Grantee and the contracting authority shall be so notified in writing. The contracting authority shall give the Grantee an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the contract and/or withhold any funds due or to become due to the Grantee, pending compliance by the Grantee with the terms of these provisions.

Failure to comply with any of the terms of these provisions shall be a material breach of this contract.

The foregoing provisions will be inserted in all subcontracts for work covered by this contract.

18.2 Minority and Female Business Enterprises.

(A) This contract hereby incorporates by reference Seattle Municipal Code (SMC) Ch. 20.46A (the "Women's & Minority Business Utilization Ordinance"). The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The failure of the contractor or any subcontractor to comply with any of the requirements of SMC Ch. 20.46A shall be a material breach of contract. The City in general, and its WMBE Program in particular, are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with SMC Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside will fairly compensate the City for resulting delays in carrying out the purpose of the Program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

(B) During the term of this contract, the contractor shall:

- (1) Meet the WBE and MBE set-asides established for the contract, if any;
- (2) Make affirmative efforts to utilize WMBEs in performing the contract, whether as subcontractors, suppliers, or in any other capacity;
- (3) Require that all subcontractors make affirmative efforts to utilize WMBEs in performance of the contract;
- (4) Maintain records reasonably necessary for monitoring compliance with the provisions of SMC Ch. 20.46A, and submit such information as may be requested by the City's Director of Human Rights in order to monitor and enforce compliance; and
- (5) Require that subcontractors maintain records reasonably necessary for monitoring the subcontractor's compliance with the provisions of SMC Ch. 20.46A, and that the subcontractors submit such information as may be requested by the City's Director of Human Rights in order to monitor and enforce compliance.

## SECTION 19. REMEDIES FOR NONCOMPLIANCE

### 19.1 Termination.

(A) In the event of a material breach of this Franchise by the Grantee, the City may, without limitation, exercise all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise. Without limitation, the following shall constitute material breaches of this Franchise:

(1) The Grantee's failure or refusal to pay any required financial support for PEG Access;

(2) Any failure by Grantee to provide required Channel capacity;

(3) Any failure by the Grantee reasonably within its control to adhere to required schedules and any extensions for construction and extension or completion of the Rebuild of its Cable System, the installation and maintenance of PEG Access requirements, Interconnection or other related similar requirements;

(4) Failure to comply with Section 5.4 (Ascertainment Process).

(5) Failure of the Grantee to implement technical upgrades ordered after full review pursuant to Sections 20 and 21.

(6) Failure to indemnify the City and hold it harmless as required by Section 12.

(B) In the event the City intends to terminate this Franchise pursuant to the previous subsection, the City shall provide a written notice to cure, identifying the nature of the breach with reasonable specificity, and advising Grantee of the City's intent to terminate the Franchise. All further actions shall conform to the following procedures:

(1) The Grantee shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(2) The City shall determine (i) whether a failure to comply with a material provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the Grantee. The Grantee shall make available to the City, if requested, any records, documents or other information necessary to make the determination.

(3) If the City determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be cured by the Grantee in a manner and in accordance with a schedule reasonably satisfactory to the City, then

the City shall so notify the City Council in a written report which may recommend action to be taken by the City Council. The City shall provide notice and a copy of such report to the Grantee. In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(4) Any termination of this Franchise shall be by ordinance adopted by the City Council; provided, however, before any such ordinance is adopted, the Grantee must be given at least forty-five (45) days advance written notice, which notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise the Grantee that it will be provided an opportunity to be heard by the City Council regarding such proposed action before any such action is taken, and shall set forth the time, date, and place of the hearing. In no event shall such hearing be held less than forty-five (45) days following delivery of such notice to the Grantee. At the hearing, the Grantee shall be entitled to all the rights of due process consistent with the City procedures, including but not limited to, the right to present evidence and the right to be represented by counsel.

(C) The enumeration of material Franchise provisions set forth in this Section is not exhaustive and shall not be invoked under any guideline for contract interpretation to narrow the scope of other material terms, violation of which would be a material breach of this Franchise.

## 19.2 Liquidated Damages .

(A) Amounts of Liquidated Damages. Because the Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and the Grantee agree to the following Liquidated Damages for the following violations. These damages represent the parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 1996 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index.

(1) For failure to complete rebuild in accordance with the Franchise: \$10,000 per month for each month the violation continues;

(2) For any transfer subject to the provisions of Section 15 without prior City approval: \$200/day for each day the violation continues;

(3) For failure to comply with non-monetary requirements for public, educational, and governmental requirements of the franchise and use of the System: \$0.50 per subscriber for each month the violation continues, but not to exceed \$10,000 per month;

(4) For violation of applicable Subscriber service standards:

- (a) For standards requiring a percentage performance: \$1,000 per quarter for each percentage point below the required performance;
- (b) For failure to maintain required Subscriber Service Centers: \$1.00 per subscriber per month, but not to exceed \$5,000 per month;
- (c) For other violations: \$200 per occurrence;
- (5) For violation of any material technical performance standards of this franchise agreement: \$500 per occurrence;
- (6) For all other material violations of this Agreement: \$500 per occurrence.

(B) Procedure for Imposing Liquidated Damages.

- (1) Whenever the City believes that the Grantee has violated one or more terms, conditions or provisions of this Franchise, and Liquidated Damages will be sought, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may impose liquidated damages unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation.
- (2) The Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the City shall specify with particularity the matters disputed by the Grantee. The dispute shall then be resolved pursuant to Section 21.2.

(C) Effect on Duty to Comply. The collection of liquidated damages by the City shall in no respect affect

- (1) Compensation owed to subscribers; or
- (2) The Grantee's obligation to comply with the provisions of this Franchise or applicable law.

(D) Accrual. Liquidated Damages accrue from the date the City notifies the Grantee that there has been a violation.

19.3 Relationship of Remedies.

(A) NonExclusivity of Remedies. The remedies provided for in this Franchise and the Master Cable Ordinance are cumulative and not exclusive; the exercise of one remedy

shall not prevent the exercise of another, or the exercise of any rights of the City at law or equity.

(B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Security Fund, or the recovery of amounts under the insurance, indemnity, bonding or liquidated damages provisions of this Franchise shall not be construed as a limit on the liability of a Grantee under the Franchise or an excuse of faithful performance of any obligation of the Grantee.

19.4 NonWaiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

19.5 Cost Treatment of Fines, Liquidated Damages, Damages. No cost to Grantee arising from a breach or violation of the Agreement shall be recovered from subscribers, shall form the basis for any adjustment to subscriber rates or other subscriber charges or shall be offset against any sums due the City as a tax, franchise fee or otherwise regardless of whether the combination of franchise fees and said costs exceeds 5% of Grantee's Gross Revenues in any 12month period.



## SECTION 20. REOPENERS

20.1 Grounds. The occurrence of any of the following shall be grounds for the City or the Grantee to reopen the Franchise as further provided in this Section:

- (A) Any event that gives rise to a right to terminate the Franchise under any other provision, to be exercised only by the City.
- (B) Any court or quasijudicial action that invalidates or substantially negates the effect of any material provision of this Franchise.
- (C) Any state or federal legislation that invalidates or substantially negates the effect of any material provision of this Franchise.
- (D) Any proposed or actual use of the cable system by Grantee that is not expressly provided for in this Franchise and that invalidates or substantially negates the effect of any material provision of this Franchise.
- (E) Any required upgrade or digitization of a substantial portion of the cable system where the Grantee asserts, and carries the burden of establishing, that the required upgrade, digitization or implementation is not technically or commercially feasible.
- (F) Any ascertainment of present or future cable related community needs and interests that results in a determination that specific provisions of this Franchise no longer reflect such community needs and interests.
- (G) Any change in the competitive environment for Cable Services provided by the Grantee whereby Grantee's compliance with the terms of this Franchise would place it at an unfair competitive disadvantage with other providers of equivalent services, in which case the standards of Section 1.4 shall apply.

## 20.2 Reopener Procedure .

- (A) The City or the Grantee shall make a determination that grounds exist to implement the reopener provisions of this Section and shall formally notify the other party in writing and in reasonable detail of that determination, the grounds for it, and the proposed modification deemed necessary to address the event giving rise to the reopener; provided, however, if the grounds asserted are within those described in Section 20.1(E), the City shall first schedule a public hearing, with adequate notice to the public and the Grantee, to address the benefits, expense, and potential costs to subscribers, of implementing such modifications.
- (B) For a period of ninety (90) days following Grantee's receipt of the notice, Grantee and the City shall seek to negotiate an amendment to the Franchise reflecting the grounds

identified in notice of reopener in light of the cable related community needs and interests and the cost of meeting those needs and interests.

(C) If Grantee and the City are unable to reach agreement within the 90day period, the matter shall be submitted to arbitration, using the arbitration procedure set forth in Section 21.

### 20.3 Criteria Governing Arbitration Decision.

(A) The arbitrators shall decide whether either party has established a right to a modification of the Franchise based upon the grounds identified in the reopener notice and in light of the evidence presented to them and applicable legal authority, including without limitation any legal review conducted pursuant to Section 21, and if so, shall prescribe the modification.

(B) The arbitrators shall make the determination of whether a right to a modification exists, and the nature of any such modification, based on the following criteria:

(1) Whether the particular modification is needed to meet the present and future cable-related community needs and interests, taking into account the cost of meeting those needs and interests during the term of this Franchise and any proposed extension; provided, in the case of an arbitration involving an upgrade pursuant to Section 7.6(A)(1), the arbitrator shall be limited to determining whether the requirement of Section 7.6(A)(1) has been met by the City.

(2) Whether the particular modification is within the lawful power of the City.

(3) Whether the party having the burden of proof has met its burden.

## SECTION 21. MISCELLANEOUS PROVISIONS

### 21.1 Compliance With Laws.

(A) Subject to Section 1.5, Grantee shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

(B) Nothing in this Franchise is intended to authorize the Grantee to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the RobinsonPatman Act or any related amendments or regulatory provisions.

### 21.2 Arbitration.

(A) All disputes relating to the interpretation, application, violation or enforcement of this agreement shall be arbitrated as provided in this Section 21.2 except as provided below:

(1) To the extent that any dispute otherwise arbitrable involves the interpretation or application of state or federal laws that govern the rights and obligations of the parties under this Franchise, such interpretation or application of federal or state law shall not be subject to arbitration, but shall be resolved judicially. This exception shall not extend to the application of the common law to legal issues arising in the arbitration, or to the application of statutes that generally affect the interpretation of contracts.

(2) In the event that any material provision of the franchise agreement is determined to be invalid or unenforceable, or a reopener gives rise to a renegotiation of the agreement, and the parties are unable to agree upon appropriate modifications of the agreement, the agreement shall be modified by arbitration in accordance with this Section 21.2. Provided, however, to the extent either party establishes probable inconsistency between a proposed modification and federal or state law governing this agreement, excluding common law or statutes governing contracts generally, the arbitration proceeding shall be stayed upon the request of either party made in a proceeding filed in federal court. In any event, either party shall have the right to seek judicial resolution of issues within Section 21.2(A)(1) either before or after any arbitration proceeding.

(3) In order to minimize the likelihood of a dispute regarding the arbitrability of specific questions under the previous the previous sections, the parties agree, by way of example and not limitation, that the following issues of law are not subject to arbitration, but shall be resolved judicially at the instance of either party: (a) preemption under federal or state law and the interpretation and application of any federal or state laws that are determined to have preemptive effect; (b) the application of any federal or state law that governs the parties' relationship independently of the franchise agreement; (c) injunctive relief.

(B) Without limiting the generality of the arbitration provision, and subject to the exceptions stated above, the parties agree that disputes arising under the following provisions of the agreement shall be arbitrable and the determination of the arbitrators shall be final and binding upon both the City and the Grantee, except to the extent legal review is permitted hereunder: Access Channel assignments and interconnections; upgrade or rebuild; franchise fee modification; franchise modification due to changes in the law; ascertainment reopener.

(C) Either party may initiate arbitration by sending written notice to the other.

(D) In the event an arbitration is initiated by either party, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.

(E) The City and Grantee shall mutually select three arbitrators from the list within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon these arbitrators within the time specified herein, then the arbitrators shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the King County Superior Court.

(F) After the arbitrators have been selected, they shall take an oath to serve neutrally and impartially. The arbitrators shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. The hearing shall occur not less than one hundred (100) days after the appointment of the arbitrators except for good cause shown. The arbitrators shall make a written report to the City and the Grantee on their final determination within thirty (30) days after completion of the hearing. The determination of the arbitrators shall constitute a final arbitration determination.

(G) The arbitration shall be conducted in Seattle, Washington, in accordance with the thenexisting rules of the American Arbitration Association, except where inconsistent with this Franchise agreement, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrators may be entered by the state or federal court having jurisdiction.

(H) The cost of the arbitration shall be divided equally between the City and the Grantee. Each party shall be responsible for its own costs.

**21.3 Severability.** If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

21.4 No Recourse Against City. Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief, except where the Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited by federal law. For purposes of this section, the City shall not be considered to be acting in a proprietary capacity in granting, modifying, denying, terminating, or enforcing franchises.

21.5 Action by Agencies or Courts. Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Washington or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise.

21.6 Other Cable Franchises. The City shall not be limited or prevented by any provision in this Franchise from issuing any franchise, permit, license or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, to other cable providers. This provision shall not alter any rights of Grantee under Section 1.4.

21.7 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

21.8 Force Majeure. Grantee shall have no liability to City for penalties or damages, nor shall City have the right to terminate this Franchise as a result of any failure or delay of Grantee to perform its obligations hereunder if such failure or delay is caused by factors beyond the control of Grantee, including without limitation, war, civil disturbance, flood or other Act of God, laws, regulations, rules or orders of any governmental agency, sabotage, strikes, failure or delay in transportation, labor, or the unavailability of any product or material necessary to the performance hereof, provided that Grantee has exercised all due care to prevent the occurrence of such events which are reasonably foreseeable, including without limitation, actively pursuing alternative products, materials, labor and means of transportation. In the event that delay in performance or failure to perform affects only part of Grantee's capacity to perform, then Grantee shall perform to the extent it is reasonably able to do so. In correcting any causes of non-performance or delay, and in effecting any partial performance, Grantee shall take all necessary corrective actions as expeditiously as possible.

21.9 Notice. Any notice provided for under this franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City: Department of Administrative Services  
Office of Cable Communications  
City of Seattle

Alaska Building 12th Floor  
Seattle, Washington 98104  
If to the Grantee: TCI Cablevision of Washington, Inc.  
2233 - 112th Avenue N.E.  
Bellevue, Washington 98004